IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 637 OF 2007

IN

L.C. SUIT NO. 4510 OF 1996

NASIR MANDAL ..APPELLANT

V/S

MUNICIPAL CORPORATION OF

GR. BOMBAY ..RESPONDENTS

SHRI GIRISH DESAI WITH M/S. GEETA SHASTRI FOR APPELLANT.

MR. J.J. NAVIAR FOR RESPONDENT.

CORAM : S.K. SHAH, J.

DATE : 14TH MARCH 2007.

P.C.

1. Heard learned counsel on both sides. This Appeal is filed against the order of the City Civil Court dismissing the plaintiff's suit seeking declaration that the Notice issued by the Respondent under section 351 of the BMC Act was bad in law.

2. The Notice under section 351 of BMC Act was

issued to the Appellant to show cause as to why the structure could not be demolished. Instead of approaching the Municipal Authorities who issued the notice, the Appellant approached the court seeking aforesaid prayers. Evidence was placed before the court and on evidence the learned Judge found that the plaintiff had failed to prove that the structure was authorised and was in existence since prior to the datum line as alleged by the plaintiff who has challenged the notice under section 351 of the BMC Act being bad in law.

3. Learned counsel for the appellant has failed to produce anything on record to show that the structure was in existence since prior to the datum line and consequently the notice issued under section 351 of the BMC Act was bad in law. It is submitted by the learned counsel appearing on behalf of the Appellant that the Authority to consider whether the structure is authorised or not was the BMC and not the court. This argument is totally fallacious as the appellant himself had gone to the court instead of going to the Authority and totally failed to show to the court that the structure was legal or otherwise by

producing the relevant documentary evidence. Learned counsel for the Appellant has further submitted that it was for the BMC Authority to prove that the structure was illegal. This argument is also not tenable as the Appellant who had gone to the court claiming that the structure was in existence prior to the datum line, it was for the plaintiff to prove that fact which he failed to do. Learned counsel for the appellant further submitted that no written statement was filed and no questions were asked in the cross examination. The plaintiff has not produced any documentary evidence in support of his claim that the suit structure was in existence since prior to the datum line. Under these circumstances, I do not find any merit in this Appeal. Appeal is therefore dismissed.

4. At this stage learned counsel for the appellant requests for stay of this order. Learned counsel for the respondent oppose the same. In view of this, I reject the request made

on behalf of the Appellant.

. C.C. expedited.

(S.K. SHAH, J.)